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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte SUNIL KUMAR CHANDRUPATLA,
ARAVIND SITARAMAN, and
LESLIE ALAN THOMAS

Appeal 2009-003095
Application 09/198,590
Technology Center 3600

Decided: December 1, 2009

Before MURRIEL E. CRAWFORD, HUBERT C. LORIN, and
JOSEPH A. FISCHETTI, *Administrative Patent Judges*.

LORIN, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Sunil Kumar Chandrupatla, et al. (Appellants) seek our review under 35 U.S.C. § 134 (2002) of the final rejection of claims 1-13, 15, 16, 18, 23, and 36-49. Claims 14, 17, 19-22, and 24-35 have been cancelled. We have jurisdiction under 35 U.S.C. § 6(b) (2002).

SUMMARY OF DECISION

We AFFIRM.¹

THE INVENTION

This invention is a method and apparatus that obtains and correlates account metering data for a computer in a network. Spec. 1:7-8. The data is obtained from accounting servers and numerous routers throughout the network. Spec. 1:9-12.

Claim 1, reproduced below, is illustrative of the subject matter on appeal.

1. A method for accounting for network usage comprising:
 - obtaining accounting start-stop event data from two or more accounting servers via an information bus, wherein the information bus contains the accounting start-stop event data published by the two or more accounting servers;
 - obtaining network flow data independent from said accounting start-stop event data from

¹ Our decision will make reference to the Appellants' Appeal Brief ("App. Br.," filed Feb. 25, 2008) and Reply Brief ("Reply Br.," filed Jul. 16, 2008), and the Examiner's Answer ("Answer," mailed May 16, 2008).

two or more routers within a network through intermediary netflow collectors, said network flow data including data regarding the number and type of packets utilized by a user; and
correlating said accounting start-stop event data and said network flow data into a subscriber specific call detail record unique to said user by matching said accounting start-stop event data associated with said user with said network flow data associated with said user.

THE REJECTION

The Examiner relies upon the following as evidence of unpatentability:

Sawyer	US 5, 828,737	Oct. 27, 1998
Saari	US 6,338,046 B1	Jan. 8, 2002

The following rejection is before us for review:

1. Claims 1-13, 15, 16, 18, 23, and 36-49 are rejected under 35 U.S.C. §103(a) as being unpatentable over Sawyer and Saari.

ARGUMENT

The Appellants argue that the Examiner erred in rejecting claims 1-13, 15, 16, 18, 23, and 36-49 as being obvious over Sawyer and Saari because 1) Sawyer does not teach that network flow data includes data regarding the number of packets utilized by a user (App. Br. 13-15 and Reply Br. 2), 2) Sawyer teaches away from including in the network data the number of packets used by a user (App. Br. 15 and Reply Br. 3), and 3) Sawyer does not teach the claimed network flow data, Sawyer does not teach the claimed correlating step (App. Br. 16).

First the Appellants argue that Sawyer does not teach the claimed step of obtaining network flow data that includes the number of packets used by a user. App. Br. 13-15. The Examiner asserts that Sawyer's description of collecting bandwidth data by the bandwidth-use-monitoring device 40 teaches this limitation. Answer 3. *See also* Answer 11. In response, the Appellants assert this data in Sawyer is an *estimate* of the bandwidth use and, therefore, does not disclose data regarding the number of packets actually *utilized* by a user. App. Br. 14-15.

Second, the Appellants argue that Sawyer "teaches away from including in the network flow data the number of packets used by a user" since it refers to such methods as "'not particularly accurate.'" App. Br. 15. The Examiner does not respond to this argument. *See* Answer 11-12.

Third, the Appellants argue that since Sawyer does not describe including the number of packets utilized by a user, Sawyer cannot teach the claimed step of correlating the network flow data and the accounting start-stop even data into a record. App. Br. 16. The Examiner responds that Sawyer discloses this step because the bandwidth data is sent to a billing center to generate a bill. Answer 12.

ISSUES

The first issue is whether the Appellants have shown that the Examiner erred in rejecting claims 1-13, 15, 16, 18, 23, and 36-49 under § 103(a) as being unpatentable over Sawyer and Saari because Sawyer does not teach a step of obtaining network data where the network data includes data regarding the number of packets utilized by a user.

The second issue is whether the Appellants have shown that the Examiner erred in rejecting claims 1-13, 15, 16, 18, 23, and 36-49 under § 103(a) as being unpatentable over Sawyer and Saari because Sawyer teaches away from including in the network flow data the number of packets used by a user.

The third issue is whether the Appellants have shown that the Examiner erred in rejecting claims 1-13, 15, 16, 18, 23, and 36-49 under § 103(a) as being unpatentable over Sawyer and Saari because Sawyer does not teach that the network flow data includes data regarding the number of packets utilized by the user and, therefore, cannot teach the step of correlating the network flow data.

FINDINGS OF FACT

We find that the following enumerated findings of fact (FF) are supported by at least a preponderance of the evidence. *Ethicon, Inc. v. Quigg*, 849 F.2d 1422, 1427 (Fed. Cir. 1988) (explaining the general evidentiary standard for proceedings before the Office).

Claim construction

1. Claim 1 recites “said network flow data including data regarding the number and type of packets utilized by a user.”
2. The Specification does not contain an express definition of “regarding.”
3. A definition of “regard” is “[t]o relate, concern or refer to.” *See Webster’s II New Riverside University Dictionary* 989 (1984) (Fourth entry for “regard”).

The scope and content of the prior art

Sawyer

4. Sawyer describes a communication system where subscribers are charged for use of the system. Col. 1, ll. 6-11.
5. Sawyer teaches that the amount of bandwidth use relates to the transmission of packets. *See* col. 3, ll. 58-61.
6. Sawyer states that “. . . available bandwidth is used by the communication or call to a significant degree only when packet transmissions 36 are sent . . .” Col. 4, ll. 18-21.
7. Sawyer depicts in Figures 3A and 3B that bandwidth use increases when packets are transmitted (36).
8. Sawyer describes a bandwidth-usage-monitoring device 40 which measures the instantaneous amount of bandwidth being used by the communication. Col. 4, ll. 51-57.
9. Sawyer describes determining from the measurements, the maximum bandwidth usage for a predetermined time interval. Col. 5, ll. 34-47.
10. Sawyer describes estimating the total bandwidth usage amount for a communication by summing the maximum bandwidth usage. Col. 4, ll. 59-66.
11. Sawyer describes that the total bandwidth usage amount is used to calculate an amount to be billed. Col. 5, ll. 50-54.

Saari

12. The Examiner cited Saari to teach that start-stop event data could be obtained from more than one server via an information bus and that network flow data could be obtained from more than one router. Answer 4.

Any differences between the claimed subject matter and the prior art

13. The Examiner found that Sawyer did not teach that the accounting start-stop event data is obtained from two or more accounting servers via an information bus or that network flow data is obtained from two or more routers. Answer 4.

The level of skill in the art

14. Neither the Examiner nor the Appellants have addressed the level of ordinary skill in the pertinent art of account metering in a computer network. We will therefore consider the cited prior art as representative of the level of ordinary skill in the art. *See Okajima v. Bourdeau*, 261 F.3d 1350, 1355 (Fed. Cir. 2001) (“[T]he absence of specific findings on the level of skill in the art does not give rise to reversible error ‘where the prior art itself reflects an appropriate level and a need for testimony is not shown’”) (Quoting *Litton Indus. Prods., Inc. v. Solid State Sys. Corp.*, 755 F.2d 158, 163 (Fed. Cir. 1985)).

Secondary considerations

15. There is no evidence on record of secondary considerations of non-obviousness for our consideration.

PRINCIPLES OF LAW

Claim Construction

During examination of a patent application, a pending claim is given the broadest reasonable construction consistent with the specification and should be read in light of the specification as it would be interpreted by one

of ordinary skill in the art. *In re Am. Acad. of Sci. Tech. Ctr.*, 367 F.3d 1359, 1364 (Fed. Cir. 2004).

[W]e look to the specification to see if it provides a definition for claim terms, but otherwise apply a broad interpretation. As this court has discussed, this methodology produces claims with only justifiable breadth. *In re Yamamoto*, 740 F.2d 1569, 1571 (Fed. Cir. 1984). Further, as applicants may amend claims to narrow their scope, a broad construction during prosecution creates no unfairness to the applicant or patentee. *Am. Acad.*, 367 F.3d at 1364.

In re ICON Health and Fitness, Inc., 496 F.3d 1374, 1379 (Fed. Cir. 2007). Limitations appearing in the specification but not recited in the claim are not read into the claim. *E-Pass Techs., Inc. v. 3Com Corp.*, 343 F.3d 1364, 1369 (Fed. Cir. 2003).

Obviousness

Section 103 forbids issuance of a patent when “the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains.”

KSR Int'l Co. v. Teleflex Inc., 550 U.S. 398, 406 (2007). The question of obviousness is resolved on the basis of underlying factual determinations including (1) the scope and content of the prior art, (2) any differences between the claimed subject matter and the prior art, and (3) the level of skill in the art. *Graham v. John Deere Co.*, 383 U.S. 1, 17-18 (1966). *See also KSR*, 550 U.S. at 407 (“While the sequence of these questions might be reordered in any particular case, the [*Graham*] factors continue to define the

inquiry that controls.”) The Court in *Graham* further noted that evidence of secondary considerations “might be utilized to give light to the circumstances surrounding the origin of the subject matter sought to be patented.” *Graham*, 383 U.S. at 17-18.

ANALYSIS

The rejection of claims 1-13, 15, 16, 18, 23, and 36-49 under § 103(a) as being unpatentable over Sawyer and Saari.

Claims 1-13, 15, 16, 23, 36-46, 48, and 49

The Appellants argued claims 1-13, 15, 16, 23, 36-46, 48, and 49 as a group (App. Br. 13-16). We select claim 1 as the representative claim for this group, and the remaining claims 2-13, 15, 16, 23, 36-46, 48, and 49 stand or fall with claim 1. 37 C.F.R. § 41.37(c)(1)(vii) (2007).

Turning to the first issue, we begin by construing the step of obtaining network flow data as recited in claim 1, specifically the recitation that the network flow data include data regarding the number and type of packets utilized by a user.

Analysis begins with a key legal question -- *what is the invention claimed?* Courts are required to view the claimed invention *as a whole*. 35 U.S.C. § 103. Claim interpretation, in light of the specification, claim language, other claims, and prosecution history, is a matter of law[¶] and will normally control the remainder of the decisional process.

Panduit Corp. v. Dennison Mfg. Co., 810 F.2d 1561, 1567-68 (Fed. Cir. 1987) (footnote omitted).

Claim 1 includes a step of obtaining network flow data and recites, “said network flow data including data *regarding* the number and type of packets utilized by a user.” FF 1. (Emphasis added.) We note that the Specification does not contain an express definition of “regarding” (FF 2) and give “regarding” the ordinary and customary meaning. “[T]he words of a claim ‘are generally given their ordinary and customary meaning.”’ *Phillips v. AWH Corp.*, 415 F.3d 1303, 1312 (Fed. Cir. 2005) (*en banc*) (internal citations omitted). The “ordinary and customary meaning of a claim term is the meaning that the term would have to a person of ordinary skill in the art in question at the time of the invention, i.e., as of the effective filing date of the patent application.” *Id.* at 1313. We find that the ordinary and customary meaning of “regarding” is relating to or concerning. *See* FF 3.

Giving claim 1 the broadest reasonable construction consistent in light of the Specification as it would be interpreted by one of ordinary skill in the art, we construe claim 1 to require a step of obtaining network flow data where the network flow data includes data that relates to or concerns the number of packets utilized by the user. Claim 1 does not require that the network flow data *is* the number of packets utilized by the user, but merely *relates to or concerns* the number of packets utilized by the user.

We find that Sawyer’s description of obtaining the measurements of bandwidth by the bandwidth-use-monitoring device 40 (FF 8) and estimating a total bandwidth usage amount (FF 10) teaches the step at issue as we have construed the step above. Sawyer teaches that the amount of bandwidth used is *related* to a packet transmission, since a packet transmission requires more bandwidth than the minimum bandwidth to maintain the call. FF 5-7.

Sawyer discloses measuring the bandwidth of a call or communication (FF 8), determining the maximum bandwidth used for a set interval from the measurements (FF 9), and summing the maximum bandwidth of all intervals to estimate the total bandwidth usage amount (FF 10). Therefore, the total bandwidth usage amount is related to the number of packets utilized by the user since the more packet transmission results in a higher estimation of the total bandwidth usage amount in Sawyer. Again, we note that the claim does not require that the network flow data *is* the number of packets utilized but merely *relates to or concerns* the number of packets utilized.

Turning to the second issue, the Appellants argue that Sawyer teaches away from the claimed invention because Sawyer teaches away from “including in network flow data the number of packets used by a user.” App. Br. 15. However, as discussed above, we have construed claim 1 to require including in the network flow data, data that *is related to or concerning* the number of packets. We found that claim 1 does not require that the network flow data *is* the number of packets. The Appellants have not shown that Sawyer teaches away from claim 1 as we have construed the claim above.

Finally, in regards to the Appellants’ argument that Sawyer does not teach the claimed step of correlating the network flow data because Sawyer does not teach the claimed network flow data as previously argued and, therefore, cannot teach the claimed correlating step. App. Br. 16 and Reply Br. 3. As discussed above, we found that Sawyer taught the network flow data as claimed.

Accordingly, we find that the Appellants have not shown that the Examiner erred in rejecting claims 1-13, 15, 16, 23, 36-46, 48, and 49 under § 103(a) as being unpatentable over Sawyer and Saari.

Claims 18 and 47

The Appellants argue independent claim 18 and its dependent claim 47 in a group with the remainder of the claims. The Appellants assert that all of the independent claims, including claim 18, recite that the network flow data includes data regarding the number and type of packets utilized by a user and argue that this limitation is not taught by Sawyer as asserted in the rejection. App. Br. 13. However, we find no such recitation in claim 18 and, therefore, the Appellants' argument is drawn to a limitation that does not appear in the claim 18. "Many of appellant's arguments fail from the outset because, . . . they are not based on limitations appearing in the claims" *In re Self*, 671 F.2d 1344, 1348 (CCPA 1982). Accordingly, we find that the Appellants have not shown that the Examiner erred in rejecting claim 18, and claim 47, dependent thereon, under 35 U.S.C. § 103(a) as unpatentable over Sawyer and Saari.

CONCLUSIONS OF LAW

We conclude that the Appellants have not shown that the Examiner erred in rejecting claims 1-13, 15, 16, 18, 23, and 36-49 under § 103(a) as unpatentable over Sawyer and Saari.

DECISION

The decision of the Examiner to reject claims 1-13, 15, 16, 18, 23, and 36-49 is affirmed.

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No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv) (2007).

AFFIRMED

hh

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